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November 3, 1994

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VIA HAND DELIVERY

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EX PARTE NOTICE

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-265
Program Access Proceeding
Ex Parte Presentation

Dear Mr. Caton:

In accordance with Section 1.1206 of the Commission's rules, the purpose of this letter is to provide notification that on this date the undersigned, on behalf of our client, the National Rural Telecommunications Cooperative ("NRTC"), provided the attached material to the following Commission officials in connection with NRTC's pending Petition for Reconsideration in the above-captioned proceeding:

Merrill Spiegel
Office of the Honorable Reed E. Hundt, Chairman

Maureen O'Connell
Office of the Honorable James H. Quello, Commissioner

Lisa B. Smith
Office of the Honorable Andrew C. Barrett, Commissioner

Mary P. McManus
Office of the Honorable Susan Ness, Commissioner

Jill Lockett
Office of the Honorable Rachelle B. Chong, Commissioner

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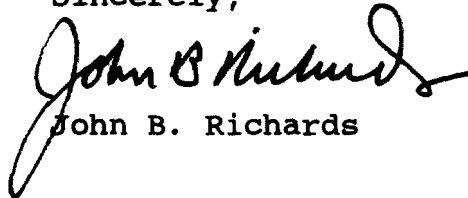
William F. Caton
November 3, 1994
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Two copies are enclosed herewith for inclusion in the public record of this proceeding.

Your attention to this matter is appreciated. Should you require any additional information, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Richards", with a stylized, flowing script.

John B. Richards

Attachments

cc: Merrill Spiegel, Esq.
Maureen O'Connell, Esq.
Lisa B. Smith, Esq.
Mary P. McManus, Esq
Jill Lockett, Esq.

**An Award of Damages May Be An 'Appropriate Remedy'
for Violation of the Program Access Rules**

- Congress provided the Commission with broad authority to order "appropriate remedies" for violation of the Program Access Requirements
 - Remedies may "include," but are not limited to the establishment of prices, terms and conditions for the sale of programming. 47 U.S.C. 547(e)(1).
 - These remedies are "in addition to and not in lieu of the remedies available under Title V and any other provision of this act." 47 U.S.C. 547(e)(2).
- The Commission possesses ample statutory authority to grant an award of damages as an "appropriate remedy" in a particular Program Access case.
 - Damages are traditionally regarded as an "appropriate remedy."
 - Cf.: Title II of the Act, which authorizes the Commission to award damages in the Common Carrier context for unjust or unreasonable discrimination.
- The Commission should reserve the flexibility to award damages to an aggrieved MVPD.
 - Complaint proceedings may be expensive and time consuming for aggrieved MVPDs.
 - Program vendors will be motivated to prolong complaint proceedings absent a possible award of damages.
- The Program Access rules will lack regulatory "teeth" without the possibility of an award of damages.
 - Programmers should be encouraged -- not discouraged -- by the Commission's regulatory structure to terminate discriminatory practices.
 - There is no public policy rationale to allow program vendors to discriminate with impunity.

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